

REMARKS/ARGUMENTS

Claims 32-44 are pending in the application. Claim 45 has been canceled without prejudice or disclaimer, claims 32-34, 38-39 and 44 have been amended, new claim 46 has been added. No new matter has been added. Reconsideration of the claims is respectfully requested.

DOUBLE PATENTING REJECTION

In paragraph 5 on page 2 of the Office Action, claims 32-44 were rejected under the 35 USC sec 102g and 102f over claims 1-41 of Patent No. 6385860.

First, it is fully submitted that neither sec 102g or 102f are applicable. The inventions were commonly owned at the time of invention and per MPEP 2138, quoting 35 USC sec 103c, the '860 patent cannot be cited against the current application.

Second, to move prosecution forward, and without waiver of rights to refile a continuation application with the previously presented claims, the claims have been amended to clearly point out a feature of the present invention which was not disclosed in the '860 patent. Specifically, the present invention has an embodiment which has curved edged on opposite sides of the label split which allows it to be used in a left or right hand tab application. By amending the claims to add this feature, any question of double patenting has been removed. Likewise it is clear that the patent right under '860 is not extended by these claims.

MPEP 2138: . 35 U.S.C. **103(c)**, however, states that subsection (g) of 35 U.S.C. **102** will not preclude patentability where subject matter developed by another person, that would otherwise qualify under 35 U.S.C. **102(g)**, and the claimed invention of an application under examination were owned by the same person*, < subject to an obligation of assignment to the same person>, or involved in a joint research agreement, which meets the requirements of 35 U.S.C. **103(c)(2)** and (c)(3), < at the time the invention was made. See MPEP § **706.02(I)** and § **2146**.

The question of first invention raised by the examiner is inapplicable in view of sec 103c and in any event in view of the present claims.

TELEPHONE INTERVIEW REQUESTED

Applicant's attorney requests a telephone interview with the examiner PRIOR to issuance of further action on this case to insure that all issues have been properly resolved.

CONCLUSIONS

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,

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Date: April 5, 2010

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